

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

HAROLD JEFFERY USHER,

Petitioner,

CIVIL CASE NO. 05-40246

v.

LINDA M. METRISH,

HONORABLE PAUL V. GADOLA
U.S. DISTRICT COURT

Respondent.

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ORDER ACCEPTING REPORT AND RECOMMENDATION

Before the Court is Petitioner's application for a writ of habeas corpus, filed on August 2, 2005, and the Report and Recommendation of the Honorable Paul J. Komives, United States Magistrate Judge. The Magistrate Judge recommends that this Court deny Petitioner's application for writ of habeas corpus. The Magistrate Judge served the Report and Recommendation on all parties on March 27, 2006 and notified the parties that any objections must be filed within ten days of service. Accordingly, any objections should have been filed by approximately April 13, 2006. Neither party filed objections to the Report and Recommendation.

The Court's standard of review for a Magistrate Judge's Report and Recommendation depends upon whether a party files objections. If a party does not object to the Report and Recommendation, the Court does not need to conduct a review by any standard. *See Lardie v. Birkett*, 221 F. Supp. 2d 806, 807 (E.D. Mich. 2002) (Gadola, J.). As the Supreme Court observed, "[i]t does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those

findings.” *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Since neither party has filed objections to the Report and Recommendation, the Court need not conduct a review.

ACCORDINGLY, IT IS HEREBY ORDERED that the Report and Recommendation [docket entry 23] is **ACCEPTED** and **ADOPTED** as the opinion of this Court.

IT IS FURTHER ORDERED that Plaintiff’s application for a writ of habeas corpus [docket entry 1] is **DENIED**.

IT IS FURTHER ORDERED that if Petitioner desires to seek a certificate of appealability (“COA”), Petitioner may file a **MOTION** for a COA within **TWENTY-ONE (21) DAYS** of filing a Notice of Appeal and shall support this motion with an appropriate brief, both of which shall comply with the Local Rules of this Court. *See Castro v. United States*, 310 F.3d 900, 903 (6th Cir. 2002) (“We do encourage petitioners as a matter of prudence to move for a COA at their earliest opportunity so that they can exercise their right to explain their argument for issuance of a COA.”). The Government may file a response with an appropriate brief, both of which shall comply with the Local Rules, within **FOURTEEN (14) DAYS** of service of Petitioner’s motion for a COA.

SO ORDERED.

Dated: May 3, 2006

s/Paul V. Gadola
HONORABLE PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE

Certificate of Service

I hereby certify that on May 4, 2006, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Raina I. Korbakis, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Harold Usher.

s/Ruth A. Brissaud
Ruth A. Brissaud, Case Manager
(810) 341-7845